

Letter of Findings: 04-20120223
Sales and Use Tax
For the Years 2008 and 2009

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ISSUE

I. Sales and Use Tax – Agricultural Exemptions.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-4; IC § 6-2.5-5-2; [45 IAC 2.2-5-1](#); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-6](#); Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974).

Taxpayer protests the assessment of use tax on his use of a tractor and a gator on his farm.

STATEMENT OF FACTS

Taxpayer, an Indiana resident, purchased a John Deere Tractor and mower deck ("tractor") on April 17, 2008. At the time of purchase Taxpayer filled out an ST-105 exemption form and did not pay sales tax. Taxpayer also purchased a John Deere Gator ("gator") on April 13, 2009, also filling out an ST-105 exemption form and not paying sales tax at the time of purchase. The Indiana Department of Revenue ("Department") assessed Indiana Use Tax on these items pursuant to a "Doubtful Purchase" investigation. Taxpayer timely protested the assessment of use tax and provided additional documentation to support his protest. An administrative hearing was held on the protest and this Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Agricultural Exemptions.

DISCUSSION

The Department determined Taxpayer's purchases of the tractor and gator were taxable citing to [45 IAC 2.2-5](#) through [45 IAC 2.2-7](#) which state that equipment must be used directly in the direct production of food or commodities that are sold either for human consumption or for further food or commodity production in order to be exempt. The Department clarified to Taxpayer that general farm use was not sufficient for exemption.

Taxpayer, to the contrary, claimed that he is entitled to the agricultural exemptions.

Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. Generally, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable. [45 IAC 2.2-5-6\(a\)](#). An exemption from use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional exemptions from sales tax and use tax. A statute which provides a tax exemption, however, is strictly construed against the taxpayer. Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974).

IC § 6-2.5-5-2 states:

- (a) Transactions involving **agricultural machinery, tools, and equipment** are exempt from the state gross retail tax if the person acquiring that property acquires it for his **direct use in the direct production**, extraction, harvesting, or processing **of agricultural commodities**.
 - (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.
- (Emphasis added).**

[45 IAC 2.2-5-1\(a\)](#) further provides:

Definitions. "Farmers" means only those persons **occupationally engaged in producing food or agricultural commodities for sale or for further use in producing food or such commodities for sale**. These terms are limited to those persons, partnerships, or corporations regularly engaged in the commercial production for sale of vegetables, fruits, crops, livestock, poultry, and other food or agricultural products. Only those persons, partnerships, or corporations whose intention it is to produce such food or commodities at a profit and not those persons who intend to engage in such production for pleasure or as a hobby qualify within this definition.

"Farming" means engaging in the commercial production of food or agricultural commodities as a farmer.

"To be directly used by the farmer in the direct production of food or agricultural commodities" requires that the property in question must have an immediate effect on the article being produced.

Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or an agricultural commodity. (Emphasis added).

[45 IAC 2.2-5-4](#), in relevant part, further illustrates:

(c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

- Fences, posts, gates, and fencing materials.
- Water supply systems for personal use.
- Drains.
- Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.
- Ditchers and graders.
- Paints and brushes.
- Refrigerators, freezers, and other household appliances.
- Garden and lawn equipment, parts, and supplies.
- Electricity for lighting and other non-agricultural use.
- Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.
- Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.
- Pumps.
- All saws.
- All tools, including forks, shovels, hoes, welders, power tools, and hand tools.
- Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.
- Plumbing, electrical supplies, and accessories, pumps.
- Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.
- Food for non-exempt horses, ponies, etc.
- Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.
- Field tile or culverts.
- Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).
- Any replacement parts or accessories for the above items. (Bullets added).

(d) Each of the following items is considered **exempt from the sales tax ONLY** when the purchaser is occupationally engaged in agricultural production and **uses** the items **directly in direct production of agricultural products**.

EXEMPT TRANSACTIONS

- (1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.
- (2) Feed and medicines sold for livestock and poultry described in Item (1).
- (3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.
- (4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.
- (5) Milking machines, filters, strainers, and aerators.
- (6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.
- (7) Grease and repair parts necessary for the servicing of exempt equipment.
- (8) Containers used to package farm products for sale.
- (9) Equipment designed to haul animal waste.
- (10) Equipment such as needles, syringes, and vaccine pumps.

(e) **The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic] tax. It must be directly used by the farmer in the direct production of agricultural products.** The property in question must have an **immediate effect on the article being produced**. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. **The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt. (Emphasis added).**

Taxpayer believes the tractor qualifies for exemption because it, as described by Taxpayer in his March 25, 2012, letter to the Department, has other attachments such as a cultivator, seeder and fertilizing equipment; i.e., the tractor is used for more than just mowing. However, Taxpayer filled out an "Agricultural Equipment Exemption Usage Questionnaire" that asks the Taxpayer to describe the use of the equipment being claimed for exemption. Taxpayer checked only "running/checking fence around property" which is not an exempt activity.

In the same letter, Taxpayer also explained that he purchased the tractor after he joined a wetland conservation project in conjunction with the U.S. Department of Agriculture and his county FSA in order to mow and support the wetland maintenance project.

As for the gator, Taxpayer explains in a letter dated July 13, 2012, that he purchased the gator to reduce the use of an 8-cylinder truck to perform farm chores. Taxpayer points out that he does not have children at home so the gator is not used as a toy for teenagers. Taxpayer states the gator is used to "check the fence line and the tree line," to "carry tools, chain saw, weed eater," and to haul fallen trees and trash.

The Department, however, must respectfully disagree. Pursuant to the above mentioned statutes and regulations, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable, unless the use of the tangible personal property satisfies the "double-direct" test; the equipment at issue must be involved in the direct production of the agricultural commodity and must have a direct effect upon that commodity.

Taxpayer's documentation demonstrates that Taxpayer used the tractor for maintaining the land, which does not constitute the direct production of the agricultural commodity and it did not have a direct effect upon the commodity. Likewise, the activities for which the gator is used, also constitute maintenance activities. These activities, while certainly essential to the operation of Taxpayer's farm, are not activities that meet the "double direct" test to qualify for exemption. The tractor and gator would need to be used directly in the direct production process to qualify for exemption.

In short, Taxpayer's purchases of the tractor and gator are not exempt from sales tax, and having not paid sales tax at the time of the purchases, Taxpayer was correctly assessed use tax on the use of the gator and the tractor.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 12/26/2012 by Legislative Services Agency
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